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10 TV-32 DIGITAL VENTURES INC.,  
11 Debtor and Debtor-in-Possession

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19 UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

20 In re:

Case No. 09-58098 ASW 11

21 TV-32 DIGITAL VENTURES INC., a  
22 California corporation,  
23 Tax ID: 20-1198608

Chapter 11

24 Debtor.

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28 DEBTOR'S SUPPLEMENT TO  
DECLARATION OF BOOKER T. WADE RE  
STATUS OF CHAPTER 11 CASE AND  
OPPOSITION TO MOTION TO APPOINT  
CHAPTER 11 TRUSTEE

Date: July 19, 2010  
Time: 1:45 p.m.  
Courtroom: 3020, 3<sup>rd</sup> Floor  
The Honorable Arthur S. Weissbrodt

20 TO: THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY  
21 JUDGE:

22  
23 TV-32 DIGITAL VENTURES INC., Debtor and Debtor-in-Possession (the "Debtor"),  
24 respectfully submits this Supplement to the DECLARATION OF BOOKER T. WADE RE  
25 STATUS OF CHAPTER 11 CASE filed July 12, 2010 (See Docket No. 68):

26 1. As reflected in the various pleadings and the Reporter's Transcript of the  
27 settlement agreement in the state action filed with this Court, this proceeding is a result of the  
28 related state proceeding involving property division claims and counter-claims by Arlene Stevens

1 (“Stevens”) and Booker Wade (“Wade”) arising out of their long term business and non-marital  
2 personal relationship. The competing claims were ostensibly resolved via the Settlement  
3 Agreement entered into on January 22, 2009, mediated before Santa Clara County Superior Court  
4 Presiding Judge Jaime Jacobs-May. The Settlement assigned some assets to Wade and some to  
5 Stevens. Others were to be sold and the proceeds shared. Of the two most valuable assets, one –  
6 the Woodside residence – was assigned to Stevens while the other – the commercial office  
7 building at 1010 Corporation Way, Palo Alto – Wade maintains was assigned to him as the  
8 designated arbitrator, Judge Silver, recently affirmed.

9       2. Despite the Settlement terms and Judge Silver’s contrary decision, Stevens  
10 continues to insist she owns the Debtor and implicitly the Debtor’s property. In her Status Report  
11 at page 1, Note 1, Stevens “...maintains her ownership of the Debtor.” Stevens requests the  
12 appointment of a trustee to sell the property in the current market, even though the unanimous  
13 conclusion of all three brokers experienced in the Palo Alto commercial office market is that a  
14 current sale would impair SBA, unsecured creditors and even her own interests. As detailed in  
15 the Wade Declaration, Stevens lacks concerns for all economic interests. She has dissipated and  
16 concealed funds and forfeited valuable FCC licenses, yet she says Wade is imposing on her  
17 financial devastation. Stevens has atypical motivations, one of which is simply to deny Wade the  
18 benefit of the settlement bargain. Stevens candidly requests this Court to “...turn over  
19 responsibilities associated with the Debtor to Stevens...” and ‘eliminate’ Wade’s influence.  
20 Status Report, p. 3. She says that is in the best interests of creditors. However, under Stevens’  
21 control assets are wasted.

22       3. The appointment of a trustee to displace the Debtor-in-Possession is an  
23 extraordinary measure that runs counter to the overarching presumption that a Chapter 11 debtor  
24 should remain in possession of its assets and operations while it is given the opportunity to  
25 reorganize. In re Sharon Steel Corp., 871 F.2d 1217, 1225 (3d Cir. 1989). Because appointment  
26 of a trustee is strongly disfavored, Stevens must meet a high evidentiary standard. Stevens must  
27 show by clear and convincing *evidence* that one of the prongs of Section 1104 of the Bankruptcy  
28

1 Code has been satisfied. See, e.g., In re Marvel Entertainment Group, Inc., 140 F.3d 463, 471 (3d  
2 Cir. 1998).

3       4. In Cruzan v. Director, Missouri Department of Health, (1990) 497 U.S. 261, the  
4 Supreme Court defined the applicable “clear and convincing evidence” standard to require  
5 evidence that “produces in the mind of the trier of fact a firm belief or conviction as to the truth of  
6 the allegations sought to be established, evidence so clear, direct and weighty and convincing as  
7 to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the  
8 precise facts in issue.” Herein, Stevens has not advanced any evidence of any facts. While she  
9 argues that Wade will “never, ever” sell the property, that is an argument as to future action only,  
10 not evidence and decidedly not evidence so strong as to defeat the entitlement of the Debtor.  
11 Further, as noted in his Declaration, Wade has and continues to make efforts to lease and or sell  
12 the property. Prior to and since the filing, he has retained a broker for marketing. More than a  
13 year ago Wade retained Greg DeLong of CB Richard Ellis to market for sale or lease the premises  
14 and DeLong continues to do so. Further, Stevens' brokers opined that the current distortion in the  
15 credit market is the primary culprit in selling the property but that there are recent data points  
16 indicating that a market turnaround will occur within two years. As such, there is a reasonable  
17 opportunity to rehabilitate the Debtor. Wade requests the Court to permit him to proceed with the  
18 reorganization process.

19       5. The Debtor reiterates that 30 days would be a reasonable time within which to file  
20 its amended plan and disclosure statement.

21 Dated: July 15, 2010

PINNACLE LAW GROUP LLP

22  
23 By /s/ Matthew J. Shier  
24 Matthew J. Shier, Attorneys for  
25 TV-32 DIGITAL VENTURES INC.,  
26 Debtor and Debtor-in-Possession  
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## **CERTIFICATE OF SERVICE**

I am employed in the office of a member of the bar of this Court in the City and County of San Francisco, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 425 California Street, Suite 1800, San Francisco, California 94104.

On July 15, 2010, I served the documents described as:

**DEBTOR'S SUPPLEMENT TO DECLARATION OF BOOKER T. WADE RE  
STATUS OF CHAPTER 11 CASE AND OPPOSITION TO MOTION TO APPOINT  
CHAPTER 11 TRUSTEE**

on the interested parties in this action by placing [ ] the original [X] true copies thereof enclosed in sealed envelopes addressed as follows:

TV-32 DIGITAL VENTURES INC.  
c/o Booker T. Wade  
605 Forest Avenue  
Palo Alto, CA 94301

Andrew Zighelboim  
450 West Santa Clara Street  
San Jose, CA 95113  
[azighelboim@collierparrish.com](mailto:azighelboim@collierparrish.com)

The Honorable Arthur S. Weissbrodt  
United States Courthouse, Room 3020  
280 South First Street  
San Jose, CA 95113-3099

**Attention: CHAMBERS COPIES**

[X] U.S. MAIL: Service was accomplished by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as set forth above.

BY E-MAIL/NEF: Service was accomplished through the Notice of Electronic Filing (“NEF”) for parties and counsel who are registered ECF Users.

Office Of The United States Trustee  
[USTPRegion17.SJ.ECF@usdoj.gov](mailto:USTPRegion17.SJ.ECF@usdoj.gov),  
ltroxas@hotmail.com

William J. Healy on behalf of Creditor Arlene Stevens  
[whealy@campeaulaw.com](mailto:whealy@campeaulaw.com)

Rachel K. Stevenson on behalf of Creditor  
Sterling Savings Bank  
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I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on July 15, 2010, at San Francisco, California.

/s/ Mike Terry  
**MIKE TERRY**